

AMENDED IN SENATE JUNE 19, 2008
AMENDED IN SENATE SEPTEMBER 7, 2007
AMENDED IN ASSEMBLY APRIL 10, 2007
CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1711

Introduced by Assembly Member Levine

February 28, 2007

An act to amend Sections 218.5, 512, ~~514, 515.5, and 1194~~ *and 514* of, and to add Sections 7.5, 22.5, and 226.9 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1711, as amended, Levine. Employment: wages and hours.

Under existing law, the prevailing party, with certain exceptions, is entitled to an award of attorney's fees in an action brought for nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, or in an action brought for underpayment of the minimum wage or overtime compensation.

This bill would ~~add expert witness fees to~~ *permit* the prevailing party in any such recovery *to recover expert witness fees and litigation expenses as well*.

Existing law requires an employer to provide an employee who works more than 5 hours per day with a meal period of not less than 30 minutes, unless the employee's total daily work period is not more than 6 hours, in which case it may be waived by mutual agreement. An employee working more than 10 hours per day must be provided with a second meal period of not less than 30 minutes, unless the total daily work period does not exceed 12 hours, in which case the 2nd meal

period may be waived by mutual agreement only if the first meal period was not waived.

This bill would require that the first of these meal periods ~~must~~ be completed before the end of the 6th hour of work, *but not commence before the beginning of the 3rd hour, and would require that any waiver by the parties be in writing to be valid.* The bill also would permit an employer and employee to agree to on-duty meal periods, as specified, and subject to certain specified conditions. The bill would further provide that these provisions relating to meal periods would not apply to any employee covered by a collective bargaining agreement that expressly provides for employee meal periods, among other specified working conditions. The bill would also provide that where a collective bargaining agreement exists, any authorized individual waivers of an employer must be exercised by the employee's authorized representative for collective bargaining purposes. Additionally, the bill would require all private and public employers to pay their employees an additional hour of compensation for each split shift day worked, as defined.

~~Existing law requires that an employee in the computer software field be exempt from the requirement that an overtime rate of compensation be paid if certain conditions are met, including a requirement that the employee's hourly rate of pay is not less than \$41.00 or the annualized full-time salary equivalent of that rate, provided that all the other requirements for exemption are met and that in each workweek the employee receives not less than \$41.00 per hour worked.~~

~~This bill would decrease the threshold hourly rate of pay from \$41.00 to \$36.00 for purposes of that exemption.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 7.5 is added to the Labor Code, to read:
- 2 7.5. Where a collective bargaining agreement exists, all
- 3 individual waivers authorized by this code and the Wage Orders
- 4 of the Industrial Welfare Commission shall be exercised by the
- 5 individual's authorized representative for purposes of collective
- 6 bargaining. This section is declaratory of existing law.
- 7 SEC. 2. Section 22.5 is added to the Labor Code, to read:

1 22.5. *A party entitled to recover attorney's fees pursuant to*
2 *this code is also entitled to recover expert witness fees and*
3 *litigation expenses.*

4 ~~SEC. 2.~~

5 SEC. 3. Section 218.5 of the Labor Code is amended to read:

6 218.5. In any action brought for the nonpayment of wages,
7 fringe benefits, or health and welfare or pension fund contributions,
8 the court shall award reasonable attorney's fees and costs, including
9 expert witness fees, to the prevailing party if any party to the action
10 requests attorney's fees and costs upon the initiation of the action.
11 ~~This section shall not apply to an action brought by the Labor~~
12 ~~Commissioner. This section shall not apply to a surety issuing a~~
13 ~~bond pursuant to Chapter 9 (commencing with Section 7000) of~~
14 ~~Division 3 of the Business and Professions Code or to an action~~
15 ~~to enforce a mechanics' lien brought under Chapter 2 (commencing~~
16 ~~with Section 3109) of Title 15 of Part 4 of Division 3 of the Civil~~
17 ~~Code.~~

18 This section does not apply to any action for which attorney's
19 fees are recoverable under Section 1194.

20 ~~SEC. 3.~~

21 SEC. 4. Section 226.9 is added to the Labor Code, to read:

22 226.9. (a) For purposes of this section, "split shift" means a
23 work schedule that is interrupted by a nonpaid, nonworking period
24 or periods established by an employer, other than bona fide rest
25 or meal periods provided pursuant to Section 512 of the Labor
26 Code or mandated by an applicable order of the Industrial Welfare
27 Commission.

28 (b) If an employee works a split shift, the affected employee
29 shall be entitled to one additional hour of compensation at his or
30 her regular rate of pay for each split shift day worked;
31 ~~notwithstanding his or her regular wage rate.~~

32 (c) This section applies to all employees, including those
33 employees directly employed by any public entity, including, but
34 not limited to, any county, incorporated city, town, other municipal
35 corporation, or the State of California.

36 ~~SEC. 4.~~

37 SEC. 5. Section 512 of the Labor Code is amended to read:

38 512. (a) An employer may not employ an employee for a work
39 period of more than five hours per day without providing the
40 employee with a meal period of not less than 30 minutes, except

1 that if the total work period per day of the employee is no more
2 than six hours, the meal period may be waived by mutual consent
3 of both the employer and employee *in writing*. The meal period
4 shall *not commence before the beginning of the third hour and*
5 *shall* be completed before the end of the sixth hour of work. An
6 employer may not employ an employee for a work period of more
7 than 10 hours per day without providing the employee with a
8 second meal period of not less than 30 minutes, except that if the
9 total hours worked is no more than 12 hours, the second meal
10 period may be waived by mutual consent of the employer and the
11 employee *in writing* only if the first meal period was not waived.
12 *If a waiver of a meal period is executed between an employer and*
13 *an employee, the employee may revoke the waiver at any time. An*
14 *employer must notify the employee upon the execution of a waiver*
15 *of the employee's right to revoke the waiver.*

16 (b) An on-duty meal period shall be permitted only when it is
17 mutually agreed to in writing by an employer and employee and
18 the nature of the work prevents an employee from being relieved
19 of all duty based on at least one of the following conditions:

20 (1) ~~Where the employee works alone or is the only person is~~
21 ~~the only employee~~ in his or her job classification who is on duty
22 ~~and there are no other employees who can reasonably relieve him~~
23 ~~or her of all duties. at the worksite and the essential functions of~~
24 ~~the job cannot be performed unless the employee remains on duty.~~

25 (2) Where state or federal law imposes a requirement that the
26 employee not be relieved of all duties.

27 (3) ~~Where the employee is the only person on duty who is~~
28 ~~licensed to perform work for which a license is required by~~
29 ~~applicable state or federal law.~~

30 (4) ~~Where the employee works in an isolated location and the~~
31 ~~circumstances of the workplace make it unreasonable for him or~~
32 ~~her to be relieved of all duties.~~

33 An on-duty meal period shall be counted as time worked. All
34 employees who are eligible for and agree to on-duty meal periods
35 shall be allowed to *sit and eat*. Where an on-duty meal period
36 agreement is executed between an employer and an employee, the
37 employee has the right to revoke at any time and the employer is
38 obligated to notify the employee of that right upon execution of
39 agreement. An employee who is eligible for an on-duty meal may
40 have a second on-duty meal period provided that he or she remains

1 eligible for an on-duty meal period. Piece rate employees shall not
2 be eligible for on-duty meal periods unless they are paid their
3 average piece rate wage during the meal period.

4 (c) Subdivision (a) does not apply to an employee in the
5 wholesale baking industry who is subject to an Industrial Welfare
6 Commission wage order and who is covered by a valid collective
7 bargaining agreement that provides for a 35-hour workweek
8 consisting of five seven-hour days, payment of 1 and ½ the regular
9 rate of pay for time worked in excess of seven hours per day, and
10 a rest period of not less than 10 minutes every two hours.

11 (d) If an employee in the motion picture industry or the
12 broadcasting industry, as those industries are defined in Industrial
13 Welfare Commission Wage Orders 11 and 12, is covered by a
14 valid collective bargaining agreement that provides for meal
15 periods and includes a monetary remedy if the employee does not
16 receive a meal period required by the agreement, then the terms,
17 conditions, and remedies of the agreement pertaining to meal
18 periods apply in lieu of the applicable provisions pertaining to
19 meal periods of subdivision (a) of this section, Section 226.7, and
20 Industrial Welfare Commission Wage Orders 11 and 12.

21 ~~SEC. 5.~~

22 *SEC. 6.* Section 514 of the Labor Code is amended to read:

23 514. (a) Sections 510 and 511 do not apply to an employee
24 covered by a valid collective bargaining agreement if the agreement
25 expressly provides for the wages, hours of work, and working
26 conditions of the employees, and if the agreement provides
27 premium wage rates for all overtime hours worked and a regular
28 hourly rate of pay for those employees of not less than 30 percent
29 more than the state minimum wage.

30 (b) Sections 512 (a) and (b) do not apply to any employee
31 covered by a valid collective bargaining agreement if the agreement
32 expressly provides for the wages, hours of work, and working
33 conditions of employees, and expressly provides for meal periods
34 for those employees, final and binding arbitration of disputes
35 concerning application of its meal period provisions, premium
36 wage rates for all overtime hours worked, and regular hourly rate
37 of pay of not less than 30 percent more than the state minimum
38 wage rate.

39 ~~SEC. 6.~~ ~~Section 515.5 of the Labor Code is amended to read:~~

1 ~~515.5. (a) Except as provided in subdivision (b), an employee~~
2 ~~in the computer software field shall be exempt from the~~
3 ~~requirement that an overtime rate of compensation be paid pursuant~~
4 ~~to Section 510 if all of the following apply:~~

5 ~~(1) The employee is primarily engaged in work that is~~
6 ~~intellectual or creative and that requires the exercise of discretion~~
7 ~~and independent judgment.~~

8 ~~(2) The employee is primarily engaged in duties that consist of~~
9 ~~one or more of the following:~~

10 ~~(A) The application of systems analysis techniques and~~
11 ~~procedures, including consulting with users, to determine hardware,~~
12 ~~software, or system functional specifications.~~

13 ~~(B) The design, development, documentation, analysis, creation,~~
14 ~~testing, or modification of computer systems or programs, including~~
15 ~~prototypes, based on and related to user or system design~~
16 ~~specifications.~~

17 ~~(C) The documentation, testing, creation, or modification of~~
18 ~~computer programs related to the design of software or hardware~~
19 ~~for computer operating systems.~~

20 ~~(3) The employee is highly skilled and is proficient in the~~
21 ~~theoretical and practical application of highly specialized~~
22 ~~information to computer systems analysis, programming, and~~
23 ~~software engineering. A job title shall not be determinative of the~~
24 ~~applicability of this exemption.~~

25 ~~(4) The employee's hourly rate of pay is not less than thirty-six~~
26 ~~dollars (\$36.00), or the annualized full-time salary equivalent of~~
27 ~~that rate, provided that all other requirements of this section are~~
28 ~~met and that in each workweek the employee receives not less than~~
29 ~~thirty-six dollars (\$36.00) per hour worked. The Division of Labor~~
30 ~~Statistics and Research shall adjust this pay rate on October 1 of~~
31 ~~each year to be effective on January 1 of the following year by an~~
32 ~~amount equal to the percentage increase in the California Consumer~~
33 ~~Price Index for Urban Wage Earners and Clerical Workers.~~

34 ~~(b) The exemption provided in subdivision (a) does not apply~~
35 ~~to an employee if any of the following apply:~~

36 ~~(1) The employee is a trainee or employee in an entry-level~~
37 ~~position who is learning to become proficient in the theoretical~~
38 ~~and practical application of highly specialized information to~~
39 ~~computer systems analysis, programming, and software~~
40 ~~engineering.~~

1 ~~(2) The employee is in a computer-related occupation but has~~
2 ~~not attained the level of skill and expertise necessary to work~~
3 ~~independently and without close supervision.~~

4 ~~(3) The employee is engaged in the operation of computers or~~
5 ~~in the manufacture, repair, or maintenance of computer hardware~~
6 ~~and related equipment.~~

7 ~~(4) The employee is an engineer, drafter, machinist, or other~~
8 ~~professional whose work is highly dependent upon or facilitated~~
9 ~~by the use of computers and computer software programs and who~~
10 ~~is skilled in computer-aided design software, including CAD/CAM,~~
11 ~~but who is not in a computer systems analysis or programming~~
12 ~~occupation.~~

13 ~~(5) The employee is a writer engaged in writing material,~~
14 ~~including box labels, product descriptions, documentation,~~
15 ~~promotional material, setup and installation instructions, and other~~
16 ~~similar written information, either for print or for onscreen media~~
17 ~~or who writes or provides content material intended to be read by~~
18 ~~customers, subscribers, or visitors to computer-related media such~~
19 ~~as the World Wide Web or CD-ROMs.~~

20 ~~(6) The employee is engaged in any of the activities set forth~~
21 ~~in subdivision (a) for the purpose of creating imagery for effects~~
22 ~~used in the motion picture, television, or theatrical industry.~~

23 ~~SEC. 7. Section 1194 of the Labor Code is amended to read:~~

24 ~~1194. (a) Notwithstanding any agreement to work for a lesser~~
25 ~~wage, any employee receiving less than the legal minimum wage~~
26 ~~or the legal overtime compensation applicable to the employee is~~
27 ~~entitled to recover in a civil action the unpaid balance of the full~~
28 ~~amount of this minimum wage or overtime compensation, including~~
29 ~~interest thereon, reasonable attorney's fees, and costs of suit,~~
30 ~~including expert witness fees.~~

31 ~~(b) The amendments made to this section by Chapter 825 of the~~
32 ~~Statutes of 1991 shall apply only to civil actions commenced on~~
33 ~~or after January 1, 1992.~~

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36 CORRECTIONS:

37 Text—Pages 4 and 7.

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